

STATE OF VERMONT
HUMAN SERVICES BOARD

In re) Fair Hearing No. 9946
)
Appeal of)

INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare terminating her food stamp benefits. The issues are whether the Department must count the income and resources of the father of one of the petitioner's children and, if so, whether the Department has properly calculated the household's income.

FINDINGS OF FACT

The petitioner lives with her children and the father of her youngest child. Prior to the birth of the petitioner's youngest child the Department considered the father of that child to be a "separate household" for food stamp purposes, and his income and resources were not counted in determining the eligibility of the petitioner and her other children for food stamps (see infra). Following the birth of the youngest child, the Department notified the petitioner that based on the income of the father of that child, the entire family was ineligible for food stamps.

The father is employed full-time and earns gross wages of \$404.00 per week. A pre-existing child support obligation of \$167.00 a week is deducted from his pay in addition to

the usual payroll deductions for taxes and FICA. The father owns ten acres of land in which he has about \$10,000.00 in equity.

ORDER

The Department's decision is affirmed.

REASONS

The federal and state food stamp regulations provide that parents and children and all siblings who live together must be considered as one "household" for food stamp eligibility. Food Stamp Manual (FSM) § 273.1(a)(2). In the petitioner's case, the birth of the child whose father lives in the household provided the parent/child and the sibling "link" that eliminated the possibility of separate household status for the father. Once the child was born, the Department was required by law to consider the income and resources of the child's father in determining the food stamp eligibility of the entire household.

In determining this income, the regulations establish a two-part test--"gross income" and "net income". The gross income limit is 130% of the federal poverty level for each household size. Once a household passes the gross income test, they are then subject to the net income test. Food Stamp Manual § 273.9(a). In the petitioner's case, based on the father's gross earnings from employment and on the petitioner's ANFC benefits,¹ the Department determined that

the household's income exceeded the above gross income maximum. The petitioner takes no issue either with the Department's calculations regarding her household's gross income or with the applicable federal poverty level guidelines used by the Department. The petitioner maintains; however, that the Department should exclude from her household income the amount of the father's wages that are assigned and deducted for the support of a prior-born child who does not live with him and the petitioner.

Food Stamp Manual § 273.9(b) defines income as ". . . all income from whatever source excluding only items specified in paragraph (c) of this section." Food Stamp Manual § 273.9(b)(1)(i) specifies that ". . . earned income shall include . . . all wages and salaries of an employee." The hearing officer finds nothing in the regulations that allows pre-existing child support payments to be either "excluded" or "deducted" from countable household income. See Food Stamp Manual § 273.9(c) and (d).²

Thus, it appears that the Department's determination in this matter is wholly in accord with the food stamp regulations.³ By law, therefore, the board must affirm the Department's decision. 3 V.S.A. § 3091(d) and Food Stamp Fair Hearing Rules No. 17.

FOOTNOTES

¹Because the father is employed, he and the common child are not subject to the sibling deeming provisions of the ANFC program. Thus, the petitioner and her other children remain eligible for ANFC.

²Usual deductions for taxes, FICA, etc. are made through a "standard deduction" in the net-income eligibility test. See Food Stamp Manual § 273.9(d).

³Because it determined the petitioner's household to be over-income, the Department did not consider the father's "resources". However, the father stated he has about \$10,000.00 in equity in a piece of land separate from the family's home. Since the maximum in allowable resources for food stamps is \$3,000.00 (see Food Stamp Manual § 273.8(b)), it appears that the petitioner is ineligible for benefits regardless of the father's income.

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